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Powell, Thomas Carr

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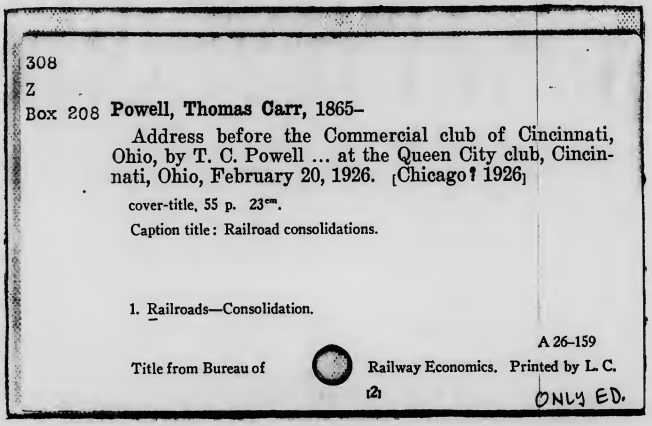

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Address before the Commercial club of Cincinnati, Ohio, by T. C. Powell ... at the Queen City club, Cincinnati, Ohio, February 20, 1926. [Chicago? 1926]

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ADDRESS BEFORE

THE COMMERCIAL CLUB OF CINCINNATI, OHIO

BY T. C. POWELL

PRESIDENT, CHICAGO AND EASTERN ILLINOIS RAILWAY

AT

THE QUEEN CITY CLUB, CINCINNATI, OHIO

FEBRUARY 20, 1926

"RAILROAD CONSOLIDATIONS"

ADDRESS OF MR. T. C. POWELL, BEFORE THE COMMERCIAL CLUB OF CINCINNATI, O., FEBRUARY 20, 1926.

"RAILROAD CONSOLIDATIONS"

Mr. President and Gentlemen:

I am delighted to be here this evening and to meet again the members of the Commercial Club.

I have selected, I am afraid, rather a dry subject for discussion, namely, "Railroad Consolidations," but I shall use few statistics and I hope by that means to avoid putting many of you to sleep.

As you know, there is now a bill before Congress, upon which hearings are being held, and this bill, which has been presented by Senator Cummins, and bills of similar purport which have been discussed, will, if adopted, radically change the present law.

I believe that in our study of the present situation, if we can learn anything from the past, we must conclude that some railroad consolidations are not only inevitable, but that they were and are desirable if projected along the proper lines.

In early days the question of regular and prompt delivery was not so much a factor to a shipper, because the time element had not become such an important item in business operations. Therefore, a shipper getting a special rate from a railroad, and probably a preferential one, was not disposed to be very critical, while the railroad giving these concessions was not

anxious to spend more money than necessary by expediting the service.

Today the question of service is paramount and, to understand my view of the future, I would like for you to visualize this country and to consider that, broadly speaking, it is divided naturally into three great regions with different characteristics, and that the scope of American Commerce lies primarily in distributing the products of each section not only locally, but to each of the other two sections.

These three great regions or territories are as follows:

First, that which has developed industrially and in which the agricultural interest is disappearing, comprises the states lying east of the Mississippi River and north of the Ohio and Potomac Rivers. In this area more than 50 per cent of the entire population is located.

Second, that territory which continues to depend largely upon agricultural and forest products, is the one which lies west of the Mississippi River and extends to the Pacific Ocean.

Third, that which originally was almost exclusively agricultural but which, for a generation, has been developing industrially, so that agriculture and manufacturing are of equal importance, is the section which lies south of the Ohio and Potomac Rivers and east of the Mississippi River.

Several important cities on the banks of the Mississippi, such as New Orleans, Memphis, St. Louis, East St. Louis, St. Paul and Minneapolis, are directly interested in two or more of the great subdivisions which I have described.

There are only three countries which can be

used for comparative purposes in discussing railway problems from our point of view, namely, the United States, Canada and Great Britain.

Canada is such a close neighbor that we are all fairly well acquainted with its agricultural, manufacturing and transportation characteristics, but it is comparable with the United States only in respect to the railway mileage

Canada has already been forced, for financial reasons, to adopt a widespread policy of railroad consolidations. There are now practically only two systems in that country, namely, the Canadian Pacific, privately operated, with a mileage of 19,765 miles, and the Canadian National Railways, owned and operated by the Government, with a mileage of 22,490 miles. Besides these two great systems there are about a dozen individual companies having an aggregate mileage of something less than 3,500 miles, and one of these roads is owned by the Province of Ontario.

In order that we may properly view the situation in Great Britain, we should realize that Great Britain has been intensively developed industrially and, with its population of 43,000,000 people, may be placed side by side with the area comprised in the States of

	1920 Census
Illinois	6,485,280
Indiana	2,930,390
Michigan	3,668,412
Ohio	5,759,394
Pennsylvania	8,720,017
New York	10,385,227
New Jersey	3,155,900
Maryland	1,449,661
Delaware	223,003

This list of nine States carries you across the Mississippi River to the Atlantic Ocean, and these States have a population today of about

43,000,000 people and probably something more.

It so happens this group of States represents the territory served directly by the Pennsylvania Railroad and, therefore, the whole group of 43,000,000 people is bound together by one large system.

By this I mean to point out that one railroad system in this country, which has been built up from a number of smaller lines, reaches directly and serves a group of States which, in population and industrial activity, equals, if it does not exceed, the population and activity of Great Britain. Most of these states are also served by the New York Central and Baltimore & Ohio Systems.

You will note that, in order to make this population and industrial comparison between the United States and Great Britain, it has not been necessary to include New England, nor the Southern States, nor the great territory west of the Mississippi River, nor the States of Wisconsin and Minnesota.

To distribute the products of Great Britain to any larger population than included in that country, necessitates the use of water transportation and the seeking of markets in distant countries.

Referring now to the situation in Great Britain, Mr. E. Cleveland-Stevens, writing in 1900, said with respect to the British policy of railroad consolidations, that

> "Parliament has at times been apprehensive of amalgamation, but has never definitely condemned it. Nor has Parliament laid down any definite scheme or discovered any criterion for amalgamation proposals. * * * Amalgamation has gone on steadily, only receiving marked attention when an exceptionally large scheme has been proposed."

As a matter of fact, I think it might have been said that combinations were looked on with favor in England, for by the end of 1845 many of the individual initial enterprises in England had already been combined into larger systems.

Most of the main railroad lines in England were projected between 1830 and 1840, and since 1845 no striking changes in location have taken place, excepting in building small extensions or connecting lines, or in constructing branch railways ("Light" railways).

In 1912, in a series of lectures, Mr. W. A. Robertson enumerated ten distinctive forms of combination or co-operation between British railway companies, as follows

1. Amalgamation.
2. Joint lines.
3. Working union.
4. Lease.
5. Working agreement.
6. Running powers.
7. Pooling agreement.
8. Agreement not to promote competing railway.
9. Clearing House conference.
10. Joint Claims Committee.

Some of these terms are peculiar to England, but except as to the last two, they can be generally understood as corresponding with the situation in this country.

It may be said here that in the negotiations between the railway companies and the British Government, during and following the war, the year 1913 was adopted as a standard, and while in our Country individual railroads may have shown better results in other years, it is a fact that the year 1913 in the United States was also one of prosperity for the United States railroads as a whole.

When the Great War Broke out, in 1914, an immediate crisis in the operations of British railways arose through the attempt of the Governmental departments to run the railroads by a series of arbitrary orders and demands for priority, and while we know that the same kind of Governmental interference in the American railways was not successful, I will, for fear of being accused of prejudice, quote only from a work by Mr. E. A. Pratt, entitled "British Railways and the Great War."

> "Every trader will remember that in the early days of the war, and even before the close of the year 1914, complaints were already being made as to an alleged shortage of railway wagons—a shortage which seemed to increase in gravity during the following year, although there had been no such wholesale dispatch of wagons for service overseas as was to follow later on. In the opinion, however, of the railway companies the trouble experienced was due, not to an actual shortage, but to a very grave misusage of wagons, more especially on the part of Government departments and of contractors working for them. Eventually and in spite of the variety of measures taken at an early stage by the Railway Executive Committee, the evil attained from a railway point of view, **intolerable proportions,** and towards the end of 1915 there was formed, on the instigation of the Railway Executive Committee, a Joint Committee of representatives of railway companies and various State departments, which was the means of eliciting some most remarkable evidence as to the nature of the abuses then proceeding, and was eventually able to bring about such remedies as were within the scope of attainment. The whole

> story told in this connection is the more deserving of perusal because it further suggests that, if the Railway Executive Committee had not succeeded in effecting a certain degree of control **over their own controllers,** the conditions of rail transport would soon have been reduced to a state of chaos."

and again:

> "It was certainly a remarkable fact that, although the State had been empowered ever since 1871 to take over the railways in case of emergency, no adequate provision had yet been made for the working of them during the period they would remain under State control. According to the terms of the Act, the railways taken possession of under the warrant issued by the Secretary of State were to be made use 'in such manner as the Secretary of State may direct;' but the action to be followed in the exercise of this power was not defined, although it was clearly a matter which should be decided upon—and provided for—in time of peace instead of being left until the emergency itself arose."

There were at this time in Great Britain about 176 railroads. Of these the British Government assumed control of 130, the remaining 46 having an aggregate mileage of only 499 miles, amounting to only 2 per cent of the total railway mileage in Great Britain.

The 130 railroads were operated during the war by the individual managements, but directed by the Railway Executive Committee, of which the nominal Chairman was the President of the Board of Trade, but of which the Acting Chairman, who also might have been called the Active Chairman, was a railway official of high standing.

When the war ended in 1918, there was a strong sentiment in Great Britain in favor of "amalgamating" the railway properties, under the impression that this would bring about economies of various kinds, and would obviate any substantial advance in the freight rates and passenger fares as compared with the pre-war figures. These expectations have not been realized.

The plan of "amalgamating" the railway mileage of Great Britain into four great systems was formulated by the Government, and was presented to the railway companies as an alternative to Government operation.

In principle, the English system of "amalgamation" is essentially different from the "consolidation" plan contemplated in this Country, because while there is necessarily some overlapping, the general idea is to segregate Great Britain into four territories, allocating one territory to each of the four systems, so that the result is somewhat similar to the situation in New England as between the Boston & Maine and the New York, New Haven & Hartford Railroad.

The mileage of these four British systems is as follows:

The London, Midland & Scottish Railway.
Total mileage 19,000
Route mileage 8,000
The London & Northwestern Railway.
Total mileage 17,500
Route mileage 6,600
The Great Western Railway.
Total mileage 8,750
Route mileage 3,800
The Southern Railway.
Total mileage 5,400
Route mileage 2,200

The total railway mileage of Great Britain, including sidings, is about 51,500 track miles.

The Pennsylvania System is the only one in this Country which is larger than the London, Midland & Scottish Railway, but you can see that the other three systems are comparable with many of the other railway systems of the United States.

Sir Eric Geddes had prophesied that in six or seven years' time economies made possible by the amalgamation would reach 100 to 125 millions per annum. So far the economies have not exceeded 10 millions, although it is more than seven years since the close of the war, and four years since the change. Furthermore, within the last few weeks the Association of British Chambers of Commerce has received a number of complaints from local chambers in regard to railway traffic delays.

The British plan of consolidation has not been successful, and the British public has begun to realize that the mere consolidation of railroads, in and of itself, is not a panacea for financial, operating or traffic ills.

A similar situation has been well described by a writer in "The Spectator," in reference to the reorganization of Vickers, the great manufacturers of armament:

> "You do not build up a stable industrial combine merely by adding yard to yard, mill to mill, factory to factory, interest to interest. There must be in these acquisitions some central and co-ordinating thread, the dove-tailing of relationships, a natural uniformity and co-operation. Otherwise the structure grows top-heavy and fissiparous."

In the contract between the British Railways and the British Government, there is a provision which insures the stockholders of the Railways

receiving as favorable a return upon their investment as they received from the operations of 1913, and during the discussions and conferences which are now taking place in England looking toward an advance in rates to carry out that obligation, a report has been made by Sir Ralph Wedgeworth, Chief General Manager of the London & Northeastern Railway, speaking for the four systems as late as December 3, 1925, in which he made the following comparisons

Expenditures in 1924, exceeded those of 1913, by $480,000,000, or 117%.

To meet this additional burden, the receipts had increased only by $440,000,000, or 70%.

The ratio of working expenses to receipts in 1913, was 64.8%.

The ratio of working expenses to receipts in 1924, was 83.0%.

The factors which accounted for the increase in working expenditures were

(a) Increase in salaries and wages.

(b) Increase in price of material.

The wages bill of the four group companies in 1913, was $236,930,000.

The wages bill of the four group companies in 1924, was $599,135,000. An increase of $362,-205,000, or 153%.

(I have estimated the pound sterling at $5.00, and while this is not strictly correct, it is sufficiently so for comparative purposes.)

Sir Ralph further said that the increase represented by the prevailing railway wage rates in Great Britain was materially in excess of any increase in the cost of living since 1913.

We come then to this conclusion, namely, that in countries comparable with the U. S., consolidation of railway properties has been adopted as a principle. It might also be said that in foreign

countries other than Great Britain and Canada, the railways are so thoroughly dominated by their respective governments that they are, in effect, consolidated, even when not actually owned and operated by the said governments.

Why then, with the example before this country of the movement toward consolidations in foreign countries and also as to many consolidations in this country, most of them resulting beneficially to the communities served, was the sentiment in opposition to consolidations so aroused?

Prejudice was responsible for many of the restrictive laws and regulations, but there must be some other explanation for the refusal to permit consolidations in this country as freely as permitted in Great Britain.

Can we not find the explanation in the fact that the British public is so thoroughly law abiding that rebates and concessions in opposition to the law are practically unknown, while in this country, as the authentic records show, the early railroads yielded to the solicitations of the shipping public and paid rebates or allowed unreasonable discriminations in favor of large shippers despite the law?

Of course, some of these arrangements were initiated by the railroad companies, but unless the companies had found a willingness to accept concessions, they could not have continued. On the other hand, the smaller shippers realized that their business was not sufficiently important to justify them in demanding rebates, and they and their friends, therefore, sought relief through legislation, and subsequently secured the passage of laws which forbade absolutely any kind of a railroad combination which would have the appearance of ultimately reducing competition.

I shall undertake to show you that the con-

solidation of railroads in the United States into a few great systems is, in and of itself, a perfectly logical development, based upon the needs of the country and the expansion of its commerce, but that a consistent economic policy such as prevailed in Great Britain has heretofore been rendered impossible in the United States, through legislation, which I fear has not been inspired by statesmanship.

After all, the steam railroad is only one hundred years old. Short as that period has been, it is difficult in some cases to trace the relics of the early railroads of the United States, even though the first one was opened for operation only ninety-six years ago, and the first locomotive ever brought to this country arrived only the year before.

While the **steam** railroad is, comparatively speaking, a new thing, the question of **transportation** has been a vital one for centuries. Always, since the beginning of civilization, it has been regarded as the duty of Government to provide suitable highways for public use, but the Governmental **regulations** have been limited to the **use** of the highways and did not include the charges for service or the details of operation until the steam railroad was projected into the picture.

Pedestrians have the right to use such public highways freely and without restraint, but the drivers of vehicles are subject to constant regulations, because they use the streets and highways only through the granting of such privilege by the proper authorities.

So strictly has the line been drawn in the City of New York, that while regulations of the vehicular traffic are numerous and are rigidly enforced, it has not been possible to secure the passage of any law or ordinance regulating the

movement of pedestrians on either the sidewalks or in the space between the curbs.

It is true that within the last few years the police in most cities have exercised a certain amount of control at congested crossings; but this is only because the walking public has been willing to accept this friendly guardianship as a means of protection. We have all witnessed the action of a policeman in holding up the vehicular traffic on a great and busy street, while he escorts an individual, sometimes only a child, from sidewalk to sidewalk, and we have perhaps considered this merely the kindly action of an officer of the law. As a matter of fact, it is an illustration of the inherent right of such pedestrian to pass freely across the public highways at a designated place, regardless of the convenience of any mere vehicles.

It is a matter of history that the first "steam carriage" was designed to operate on the public highways, but was driven off by onerous legislation. When the first railways were projected, this desire to control the operations of the new device was expressed in the charters not only in England, but in the United States, and these charter conditions were followed and confirmed by restrictive laws.

There is a popular idea that restrictive railway regulations came into being to **correct** the abuses against the public which the law makers had discovered only after the fact, but the simple truth is that railway restrictive regulations began with these earliest railway charters granted in Great Britain and in this country and before any abuses had or could possibly have occurred.

The landed gentry in England opposed the steam railway for various selfish reasons, while the great mass of the public having been for years at the mercy of those in charge of the

former means of transportation, namely, the canal companies, the coaching proprietors and innkeepers whose indifference to the needs of the public and whose monopoly of the highways and conveniences of transportation had aroused a great deal of antagonism, demanded also that they should be protected against similar exactions from railway companies. At the same time it must be said that the common people welcomed the new freedom which they hoped would result from transportation service by railroads operated at a greater speed than ever known.

It can be affirmed, therefore, that some railroad laws were born of fear and prejudice in England, and as many of our laws reflected the English laws, so it transpired that many of our railroad regulations in America have been based on English railroad practices and regulations.

Perhaps, I can best picture the feeling in England by quoting from a work dated London, 1852, entitled "Our Iron Roads."

> "The extent to which legislative interference ought to go in reference to railways, is a matter which has caused much discussion, and brief reference must be made to it. Some have argued very strenuously that the efficiency and independence of public efforts is the best safeguard of the public weal, and that whatever the government has touched in the way of interfering with private undertakings, it has only marred. On the other hand, Englishmen rightly cherish a deep hatred of monopolies, and railroads are essentially of this nature. Of all tyrannical powers in the country, a railway company is the most formidable. It applies to Parliament to be endowed with powers which the common law denies to the Sovereign herself; it seeks for authority by which, without

> leave, and in defiance of it, it may invade property, having purchased it at a price which, from local associations or circumstances, may be far below its value to the possessor; it levels grounds and houses without remorse, be they grange or cottage; or, what is worse, it cuts close by and utterly mars the estate without actually touching it; and fells down, without mercy, the oaks which ancestors may have planted, and destroys forever that which may be most dear to its proprietor. And all this must be submitted to, because the public weal is paramount to private consideration. * * * If individual interest has been sacrificed in order to confer these advantages, the public is sufficiently involved in the matter to warrant the exercise of public control."

These British regulations included such items as noise and smoke prevention, maximum rates of freight and of passenger fares, but did not include any prohibition of consolidation; thus the absorption of the smaller lines proceeded as I have previously described.

I do not intend to enumerate all the railroad consolidations in this country, but I think it will be interesting for me to name the beginnings of some of the present trunk line systems.

The Delaware & Hudson had its origin in the Delaware & Hudson Canal Company, the first railway being operated for the purpose of handling anthracite coal, and the first locomotive placed on any track outside of England, and that ever turned a wheel anywhere on the Western Hemisphere, was the "Stourbridge Lion" which was built in Stourbridge, England. This engine was sent to Honesdale, Pa., and ran its trial trip there on August 8, 1829. A subsequent

trip was made in September, 1829, and then the engine was abandoned as too heavy.

The **Baltimore & Ohio,** which is the only one of the great systems retaining its original name, began with a railroad thirteen or fourteen miles long, extending from Baltimore to Ellicott's Mills, opened in 1830.

The **Southern Railway** started with the Charleston & Hamburg, which was first operated by steam in November or December 1830. The first engine was called the "Best Friend," and has gone down in history as the first one to have a "nigger squat on the safety valve" (who suffered the usual unfortunate consequences).

The **Pennsylvania System** claims the Philadelphia & Columbia as its parent, the charter having been granted in 1823. This road extended from Philadelphia to Columbia, a point on the Susquehanna River, 27 miles south of Harrisburg. The first twenty miles were opened for travel in 1832, and the entire mileage of eighty-one miles in 1834. However, the Camden & Amboy, now also part of the Pennsylvania System, was projected in 1830, and was actually operated by steam in 1831.

The beginning of what is now the **Reading System** was the Philadelphia, Germantown & Norristown Railroad, which was also the first railroad operated in the State of Pennsylvania, and was opened for travel in the Spring of 1832.

The **New York Central System** had its birth in the Mohawk & Hudson Railroad, 16 miles long, constructed from Albany to Schenectady, to connect with the Erie Canal, and opened for operation in 1831. It was over this railroad that the Dewitt-Clinton was operated, the third locomotive built in the United States for actual service. The first trip was on July 5, 1831, although this road, like the B. & O., was in the

beginning operated by horse power. The Mohawk & Hudson was changed to Albany & Schenectady Railroad on April 19, 1847.

The beginning of the **Erie Railroad** was the New York & Erie, projected from the City of New York, or "the most eligible and convenient point in its vicinity," to Lake Erie, and, as a sample of early State prejudice, it is worth noting that the New York & Erie Company was restrained from making any connection with railroads in Pennsylvania or New Jersey without "special permission" of the Legislature.

The first ground for the **New York & Erie** was broken on November 7, 1835, and the Board adopted a 6 ft. gauge, one of the primary purposes being that thereby the New York and Erie should be entirely independent of any connection that might, although indirectly, lead the desired new trade away from New York.

The **D. L. & W.** began with the Ithaca & Owego, 29 miles long, which was put in operation in 1832, and this road, together with the 16 miles of the Mohawk & Hudson, comprised the total railroad mileage of the State of New York in 1832, namely, 45 miles."

The **Wabash System** was started with the "Northern Cross" Railroad, from a point called Meredosia, on the Illinois River, to Springfield, Ill. Apparently, Meredosia did not benefit by the union of river and rail transportation, because, while it is still in existence as a station on the Wabash, it was recorded in 1920 as having 810 people. The Northern Cross Railroad was opened for operation on November 8, 1838, and subsequently there occurred on this road the first recorded fight between a bull and an engine, very much to the detriment of the bull.

The first railroad out of Chicago, was the one chartered in 1836, connecting that City with

Galena, Ill. Galena has prospered more from its natural resources than because of its railroad facilities, and now has a population of about 5,000. This road is now part of the C. & N. W.

The Big Four, so far as the State of Ohio was concerned, had its beginning in the Mad River & Lake Erie, which was the first railroad in Ohio, and was projected from Dayton to Sandusky, the first sod being cut at Sandusky on September 7, 1825.

By 1850, Cincinnati's only trunk line was that connecting Cincinnati with Sandusky, the name having been changed to the Cincinnati, Sandusky & Cleveland. Incidentally, the first engine on this road was the first in America to sport a regular steam whistle.

Most of the many early railroads in the United States were individual enterprises, and there was little effort made to correct the situation which was described by Henry Adams, in writing of the administration of Thomas Jefferson, when he said:

> "Politically, each group of States lived a life apart."

This isolation was in all probability the result of disconnected transportation.

In later years the future of America as a country to be developed by railroads, was well expressed by Gail Hamilton, when he said:

> "For if there were to be no railroads, it was on the whole, rather an impertinence in Columbus to discover America."

The **New York & Harlem Railroad** had been opened in 1833; the general direction was toward Boston, but the road was not prosperous. In 1840, it was authorized to construct a railroad through the County of Westchester, and the first definite proposal to combine two railroads in this country, of which I can find a record, was made

in 1841 by the President of the New York & Harlem Railroad to the management of the New York & Erie Railroad.

By that time the New York & Erie had been constructed from Piermont, N. Y., on the Hudson River, to Goshen, N. Y., a distance of 50 miles, and was serving the City of New York by steamboat service between Piermont & Manhattan Island, a distance of about 24 miles. While the New York & Erie had been prohibited from making a connection with any railroad in New Jersey or Pennsylvania, this prohibition, apparently, did not apply to other railroads in New York State. Nevertheless, the New York & Erie management took no action on the proposal of President Brooks.

The letter of the President of the New York & Harlem Railroad Company is dated August 7, 1841, and in it he proposed that the New York & Harlem and the New York & Erie Railroads should jointly construct 8 1/3 miles from a connection with the New York & Harlem Railroad at White Plains, to a point on the Hudson River opposite Piermont, connecting the two railroads by two miles of ferry. His letter closed with the statement that this would "present to the public a direct railroad route from the City Hall to Goshen, a distance of 78 1/3 miles."

As this offer was not accepted and as the steamboat service between Piermont and New York proved unsatisfactory, the Erie was subsequently compelled to absorb the Paterson & Columbia and the Paterson & Hudson River Railroads, in order to secure access to Jersey City, and thence by a short ferry to New York City.

Following the completion of the Hudson River Railroad, from New York to Albany, a distance

of 144 miles, in 1851, the first real consolidation was that effected by the New York Central & Hudson River Railroad which, effective on August 1, 1853, combined the following roads under one management:

The Albany & Schenectady (which chartered in 1826 as the Mohawk & Hudson, was, as previously stated the nucleus of the system),

Schenectady & Troy,
Utica & Schenectady,
Syracuse & Utica,
Rochester & Syracuse,
Auburn & Rochester,
Buffalo & Lockport,
Mohawk Valley,
Rochester, Lockport & Niagara Falls,
Buffalo & Rochester,
Hudson River Railroad.

This consolidation resulted in a through line from New York to Lake Erie, competitive with the New York & Erie, which by then had been completed to Dunkirk, N. Y., on Lake Erie, and which up to that time was the longest railroad in the world.

In 1832, a "trans-continental" railroad was proposed by a writer in the Ann Arbor, Michigan "Emigrant," and this was urged before the United States Congress by Hartwell Carver.

In 1842, a bill, providing for the construction of a railroad from St. Louis to the Pacific Coast, was presented to Congress; but these men were in advance of their times because sectional jealousies prevented any sober consideration of the idea.

Even the discovery of gold in California did very little to hasten the building of the transcontinental roads, and it was not until the Civil War emphasized the need for closer relations between the East and West, that the Union Pacific and the Central Pacific were started. (As Spearman says—

"The great plains were the home of the Indian, and the buffalo. Pikes Peak was a watchword, the Rocky Mountains a dream, and California a fever when national thought crystallized into a demand for the first Pacific Road.

The ten years that led up to the Civil War saw the project discussed by each succeeding Congress with an earnestness and attention second only to that expended on the slavery question.

In 1853, the project got into its first Presidential message; the Thirty-second Congress gave it its first special committee. (But in the correspondence between John Sherman and W. T. Sherman, in 1856, the feeling was strong for a wagon road.)

Ground for construction was broken at Omaha * * * Dec. 2, 1863, and actual construction began on the Union Pacific very early in 1864. Leland Stanford, on January 8, 1863, had turned the first shovelful of earth for the California end of the undertaking at Sacramento.

On November 7, 1867, the last railroad link in the trans-continental line east of the Missouri was completed. Wm. B. Ogden had pushed the Chicago and Northwestern Railway into Council Bluffs."

(From F. H. Spearman's, "The Strategy of Great Railroads.")

On May 10, 1869, the junction was made at Promontory, Utah, and another consolidation anticipated.

In the meantime the public was content to be satisfied with wagon transportation across the plains and by water transportation around Cape Horn or across the Isthmus of Darien or across Nicaragua. Even though the merchants of that time recognized the need for speedy transportation, and thereby brought about the development of the American Clipper ships, there was very little comprehension of the need for what we now term "a co-ordinated system of rail transportation."

The railroads continued to be inspired by individuals, sometimes by individual communities and were built without regard one to the other and without taking advantage of the topography of the country for long distance with a view to the future transportation. Trade requirements frequently formed the incentive, but the jealousy of competing centers quite as often limited the development.

In 1852, Ohio had twenty-six railroads, of which 890 miles were in operation and 1,481 under construction. Massachusetts had thirty-seven railroads, with 1,153 miles in operation and 67 under construction. New York had forty-four railroads, with 1,046 miles in operation and 946 under construction. Pennsylvania had the largest number of railroads, namely, fifty, and the largest mileage in operation, namely, 1,323, but it is somewhat gratifying to say that Ohio, with its combined mileage in operation and under construction, was the most ambitious of all the States, with a total mileage of 2,371.

State	Number	Miles in Operation	Miles under Construction
Maine	10	283	175
New Hampshire	16	463	76
Vermont	9	369	167
Massachusetts	37	1,153	67
Rhode Island	1	50	—
Connecticut	13	570	64
New York	44	1,046	946
New Jersey	10	290	40
Pennsylvania	50	1,323	535
Ohio	26	890	1,481
Indiana	20	538	1,117
Illinois	14	271	1,606
Total mileage of all states including the above	336	11,565	11,228

Even Cincinnati was not innocent of prejudice, because when the Little Miami Railroad was constructed, engines were forbidden to come west of Columbia, and from that point the trains were brought into the City by horses.

The most lasting indication of this feeling, however, is in the switch engines of the New York Central Railroad, now operating on 11th Avenue and along the Hudson River front in New York City, which are still so enclosed as to look like a box car to avoid frightening the horses which, in point of fact, are confronted every minute with auto trucks and busses almost as large as a modern freight car and actually larger and more terrifying than some of the old cars and engines.

It was about twenty years after the first railroad was opened for operation in England, that the first general movement toward consolidation of railroad properties took place, and it was about twenty years after the first railroads were

opened in this country, that the first movement toward a general consolidation took place in the United States, and of which, as stated, the first substantial example was the New York Central & Hudson River in 1853.

Nevertheless, very early a prejudice sprang up against consolidations. Probably this prejudice was based on fear of monopoly and partly because many of the early railway enterprises were initiated by individuals whose power to discriminate was only too evident. This prejudice and fear combined has led to many unjust and inconsistent State laws, and it is because of these inconsistencies that the approval of the Interstate Commerce Commission to a consolidation under the present Transportation Act of 1920, takes precedence over State laws and the regulations of any State Railroad Commission. Some of the legislation intended to increase competition between carriers, remind one of the conversation between a certain doctor and his patient:

> Doctor: "Deep breathing, you understand, destroys microbes."
>
> Patient: "But Doctor, how can I force them to breathe deeply?"

The public thought at one time that it had discovered a way to secure superior railroad service with low rates and minimum passenger fares, and this plan was to force unrestricted competition between all the carriers, but without giving the railroad companies any protection whatever. Even the decisions of the courts of the different States were frequently conflicting.

Certain of the States had incorporated into the State Constitutions a clause prohibiting consolidations. Other States carried the same idea into more or less clearly worded laws.

Mississippi, for instance, forbade any kind of a combination by a law so strict that even two laundries could not combine into one.

South Carolina provided that the question of whether two railroads proposing to combine were in fact competing, was one to be settled by the jury. The only South Carolina consolidation case with which I was connected as a witness, was settled by the jury in favor of the consolidation, on the theory that as the smaller road was too poor to pay for cattle injured on the right-of-way, the farmer stood a better chance to get damages from the larger road. The leading local counsel who had based his argument in favor of the consolidation on the fact that the famous South Carolina patriot, Robert Y. Hayne, had first conceived of the through trunk line which the proposed consolidation would effect, on learning this, relieved his feelings and at the same time celebrated his victory by going off on a three days "bat."

The State Constitution of Kentucky provides that when the enacting legislation has been passed, a railroad corporation may be forbidden to hold real estate for more than five years without developing it for railroad purposes, so that it is impossible for a railroad corporation in its own name to acquire and hold property for future development which may not take place until more than five years later. The penalty is forfeiture of the real estate to the public school fund and while this can be avoided in some cases by creating or setting up a holding corporation, the fact is that some pieces of land, the use of which was uncertain, have been given up rather than to bother about them. The purpose of the law is, of course, to prevent railroad monopoly.

Perhaps, as I have intimated, the fear of monopoly was accentuated by the knowledge

that larger shippers received favors in the way of special rates, passes and other concessions from the railroads. Small shippers feared they would be at a greater disadvantage than before; while the shippers who had enjoyed special favors were apprehensive that consolidations, especially of competing lines, would reduce their influence over the carriers.

Certain it is, that in England where both carriers and traders obeyed the laws, consolidations were very little feared, but rather welcomed, while in America, where rebates and privileges were demanded and given, there was active opposition to any railroad consolidations which had the slightest indication of restricting competition.

The Chicago **World's Fair** was held in 1893, to celebrate the anniversary of the discovery of America, but it might very well have been to celebrate the consolidation, absorption, or merging by that year of nearly 2,500 separate railroads and railroad companies, without counting the numerous roads which had been projected and chartered but had been abandoned before any substantial work had been done.

In the period between **1903** and **1925,** (and omitting the intervening ten years between 1893 and 1903) there have been over 1,600 railroads merged with other lines, so that it is safe to say that the railroad systems of today represent a consolidation, merging or leasing of 5,000 separate companies, and probably an accurate count would develop a great many more.

In spite, therefore, of the apprehension of disastrous results from consolidation, these consolidations have been going on with more or less continuity. Many and probably most of them, have effected an improvement in railroad service. They have insured a longer continuous carriage

under one management and have prevented the frequent transfers which, in the early days, were rather a matter of pride than a question of convenience.

The trouble still existing now, however, is that many of the independent companies are able to serve only a few local communities and were not conceived in any continental way, and for that reason they are disconnected and with a limited influence or traffic.

This limited traffic in itself led in the past to rate cutting, and to prevent this destructive effect upon the revenues of the carriers, there had been inaugurated prior to 1887 many schemes for **pooling** the traffic or revenue of competing carriers.

The public's desire to control the railroads nationally was expressed in the Interstate Commerce Act of 1887.

It seems clear that the railroad managements did not anticipate that pooling would be forbidden and, therefore, in order to establish a ratio of tonnage as between the several carriers on competitive traffic, there was for a few months preceding the actual passage of the bill a hectic period of rate cutting, but when the law became effective, it was found to contain the following prohibition:

> "That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof and in any case of an agreement for the pooling of freights as aforesaid, each

day of its continuance shall be deemed a separate offense."

(Paragraph 5 of Section 5, Interstate Commerce Commission Act adopted February 4, 1887, effective April 1, 1887.)

The act of 1887 also forbade rebates and other unreasonable discriminations and provided for the publication of tariffs to be filed with the Interstate Commerce Commission.

The immediate but temporary effect, was to eliminate rebating, but as there was no moral obligation to charge a large shipper as much as a small shipper and as, therefore, no moral law was violated **in applying to the sale of railroad transportation**, the usual business custom of selling large quantities of merchandise at a lower unit price than small quantities, and as the Interstate Commerce law did not impose any obligation upon the shipper or receiver, it naturally followed that as the law itself had taken away the only protection that had been devised in the interest of the **small** shipper, namely, **pooling** of revenue and traffic between the carriers, rebates, concessions and discriminations continued. The small lines were not the only ones guilty of these irregularities. The larger lines were actively competing and successful competition sometimes meant secret arrangements with the larger shippers.

Undoubtedly, however, these irregularities gradually led to the absorption of some additional lines by the larger systems, and when possible the consolidation of lines which were competing with each other (such as the "absorption" of the West Shore by the New York Central as described by Mr. Depew in his "Memories.")

By 1895, considerable progress had been made in the direction of forming the larger railroad systems of today.

For instance, the Southern Railway commenced in 1894. In 1895, the Santa Fe, which then controlled the St. Louis & San Francisco, was in the hands of a Receiver and being reorganized.

By June, 1895, the New York Central, then known as the New York Central & Hudson River Railroad Company, comprised 2,632 miles of road mileage.

The mileage of the Baltimore & Ohio System was 2,094 miles.

The mileage of the Pennsylvania Railroad East of Pittsburgh was 2,685, and West of Pittsburgh 4,489 miles, and these subdivisions were generally known respectively as the P. R. R. and Lines West.

By this time the Illinois Central had taken in the Yazoo & Mississippi Valley and the L. N. O. & T., but had not finally concluded the purchase of the Chesapeake, Ohio & Southwestern. In 1896, the Illinois Central leased the St. Louis, Alton & Terre Haute Railroad, thus securing a connection between St. Louis and Cairo.

It is interesting at this point to refer to the effort made by the L. & N. R. R. to secure control of the Chesapeake, Ohio & Southwestern Railroad and some of the companies affiliated therewith. These properties included valuable and ample terminals in Memphis, Louisville and Evansville. It was held, however, by the Courts that the charter of the L. & N. did not authorize it to acquire the Chesapeake, Ohio & Southwestern. This suit was twice decided adversely to the L. & N., lastly by the unanimous opinion of the Court of Appeals of Kentucky, which was the court of last resort, in the State from which the L. & N. holds its charter. A writ of error was taken to the U. S. Supreme Court, but that Court decided adversely to the L. & N. R. R. Co.,

whereupon the Illinois Central acquired the property.

The **Sherman anti-trust** act was approved July 2, 1890, but no one, not even its authors, imagined that it was intended to apply to the railroads. However, in the Trans-Missouri Freight Association case, at which time the Honorable Judson Harmon, of Cincinnati, was Attorney General of the United States, the Supreme Court ruled differently, on March 22, 1897.

It should be explained that the Trans-Missouri Association was made up of a number of railroads whose officers adopted this plan of assuring to the public and to each other, openly published schedules of freight rates available equally by all lines in accordance with the territory served. The Sherman anti-trust act was designed to prevent **injurious** combinations in restraint of trade, and the probability is that had the Court thoroughly understood the purpose of the Trans-Missouri Association, this decision would not have been rendered. After this decision, 166 U. S. 290, however, and which resulted in dissolving the Trans-Missouri Freight Association, all like associations were compelled to follow suit, and the results so far as the tariff rates were concerned, were chaotic; without protection of an association whose members were pledged to abide by the open publication of net rates, the small roads which were on the market for sale and not for service, were demoralizing the traffic, disturbing commercial trade relations and were in fact purposely making themselves a public nuisance in the railroad world.

The conservative policy adopted by Mr. Finley of the Southern Railway, Mr. M. H. Smith of the Louisville & Nashville, Mr. Walters of the Atlantic Coast Line, Mr. Cassatt of the Pennsylvania, and bythe executives of some of the other

larger systems, did not permanently stabilize the rate situation.

The result of this guerilla warfare of these small lines was successful. There then followed a further period of absorption rather than consolidation, and the small roads were bought or leased at their nuisance value and not because they always fitted into the larger systems. This is shown by the fact that in later years many of these small lines of the above character have been dropped by the larger companies.

Regardless that these absorptions were mainly the result of efforts made by the larger companies to maintain the published tariff rates by removing the weak lines from the picture, a fear continued in the minds of the public that these larger systems were becoming larger for some unholy purpose and that through the removal of the power of the smaller lines to endanger the rate structure, the independence of the communities served by them was imperiled.

I remember that one shipper said to me that he was very much dissatisfied with the disappearance of one of the small roads as an independent line, as he was no longer able to get any "discounts" from the standard tariff. Certainly there was still very generally a dread, although an unreasonable one, of consolidations of any kind.

I think I should refer here to the plan of Collis P. Huntington to establish a trans-continental line from the Atlantic Coast at Hampton Roads, Va., through Louisville, Memphis and New Orleans to the Gulf, and thence by the Southern Pacific to the Pacific Coast. This plan was never completely carried through.

The C. & O. is now included in the proposed Greater Nickel Plate merger, while the Huntington lines from Louisville to New Orleans have

been included as above described in the Illinois Central System.

"In 1901, the Union Pacific and Southern Pacific lines were merged into the largest and most important combination of railroad properties that had ever been made." (George Kennan.)

This combination was investigated by the I. C. C. in 1907, and I recall that in his testimony before the Commission, Mr. Harriman stated that it was his purpose to continue the policy of merging the lines until he had completed a transcontinental system extending from the Atlantic to the Pacific. In justification of this, George Kennan, in his life of Harriman, quotes from Judge Thomas M. Cooley, the first Chairman of the Interstate Commerce Commission, in what is known as the Omaha Board of Trade Case, the following: "The more completely the whole railway system of the country can be created as a unit, as if it were all under one management, the greater will be the benefit of its service to the public, and the less the liability of unfair exactions."

I do not believe, however, that the country generally is disposed to subscribe to the doctrine of a single railroad system for the entire United States.

In 1904, the Northern Securities Company was dissolved by an order of the U. S. Supreme Court, which, on March 14th of that year, decided that the Northern Securities Company was "an illegal combination in restraint of trade."

Up to this time there had been no control over the shipping public. It is an axiom in railroad traffic operations that a rebate cannot be paid by a railroad unless there is also a shipper or receiver of freight who will accept the rebate, and, to correct this trouble, Senator Elkins introduced a bill which was passed by Congress in

1903. As it was amended in 1906, this law read and still reads as follows:

ELKINS LAW

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Sec. 1. (As amended June 29, 1906.) **That anything done** or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; **and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory**

thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: Provided, That any person or any officer or director of any corporation subject to the provisions of this Act, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, **in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment,** in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District or Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall in addi-

tion to any penalty provided by this Act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

Sec. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same

manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Sec. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the Circuit Court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed, or as being committed in part in more than one judicial district or State, it may be dealt with, inquired or, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discriminations by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States whenever the Attorney General shall direct, either of his

own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled "An Act to regulate commerce" and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and shipper, which relate directly or indirectly to such transaction the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding:

Provided, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and monopolies,' 'An Act to regulate commerce,'

approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney General in the name of the Interstate Commerce Commission.

Sec. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provision of this Act.

Sec. 5. That this Act shall take effect from its passage."

The new feature of the Elkins Act was not so much with respect to the obligations of the carriers as in the penalty imposed upon every person or corporation, whether carrier or shipper, who was guilty of violating the tariff rates and regulations. The effective word was "concession," and the scope of this word is comprehensive enough to include everything objectionable that the other specific phrases of the law do not include.

Immediately after the passage of the Elkins Act, those roads which had made agreements with large shippers to charge less than the then openly published rates, began to clear their skirts by publishing and filing with the Commission tariffs which included the rates which had actually been agreed upon with the shippers and charged on their freight. As a matter of policy, the railroads felt compelled to take this action rather than to withdraw the special rates, for

fear of disturbing the business relations that had been built up on these concessions, and for fear also that the traffic would be diverted to a competitor. This necessarily resulted in a much lower scale of rates being published throughout the country than the smaller shippers had been charged theretofore, and it will be remembered that President Roosevelt took upon himself in later years a large amount of credit for reducing the rates to the public generally. These net rates, it should be stated, were then assumed to be reasonable rates.

"In the case of Armour Packing Company vs. U. S., 209 U. S. 56, decided March 16, 1908, a divided court affirmed a fine of $15,000 against the Armour Packing Company—prosecution under the original Elkins Act—the offense charged being the shipment of a quantity of oleo-oil from Kansas City to New York, intended for export, in August, 1905, at a rate lower than the published tariff rate.

In June, 1905, the Burlington Railroad contracted with the Packing Company to carry export shipments from Kansas City until December 31, 1905, at a specified rate, the proportionate part of which from the Mississippi River to New York City was 23 cents per cwt. On August 6, 1905, the tariff was amended and duly published and filed, showing the proportionate part from the Mississippi River to New York City as 35 cents instead of 23 cents per cwt. At that time, the question being a new one, the shipper and the Burlington believed that the contract was not superseded by the tariff and accordingly the Burlington issued a bill of lading at the contract rate as initial carrier and accepted prepayment on the shipment from Kansas City, covering delivery to the steamship.

Among other things, this decision is 209 U. S. sustained the criminal prosecution and fine, not-

withstanding the good faith of the parties, and held squarely that the tariff rate must prevail against any contract. This decision is one of the leading cases on the subject and, with the dissenting opinion of Justice Brewer, concurred in by Chief Justice Fuller and Justice Peckham, occupies some thirty-three printed pages."

Notwithstanding the Elkins Act, the previous decision of the Supreme Court in the Trans-Missouri Association case, in March, 1897, left the carriers without any machinery to discuss any kind of a regulation or rate which could be interpreted as restraint of trade, and this condition continued until the rule of reasonable construction of the Sherman Anti-Trust Act was announced by the United States Supreme Court, in the case of Standard Oil Company vs. United States, 221 U. S. 1, decided May 15, 1911, and followed by U. S. vs. U. P., 226 U. S. 61, decided December 2, 1912.

It should be remembered that the Interstate Commerce Commission never did and does not now have the responsibility of enforcing the Anti-Trust Act, but during the intervening period between 1897 and 1911, the Commission assumed an inquisitorial attitude, and was always very anxious to know under what circumstances any railroad traffic official decided to quote or publish any specific rate. The Commission was invited at different times to attend the railroad meetings, but probably through fear that such attendance would seem to sanction the proceedings, always declined to take advantage of the invitation.

It can be readily seen that this irritating situation tended to encourage consolidations or control through a lease or by purchase of a majority of the stock of the lines, which, while not **secretly** rebating, were in fact doing more **permanent**

harm by publishing rates in favor of either a preferred shipper or a community and thus breaking down the rate structure generally.

I suppose that Mr. Harriman had this in mind when, according to his biographer, after receiving in cash from the sale of the Northern Pacific and Great Northern stocks, $58,000,000, he undertook to "extend the influence of his roads, facilitate traffic and stabilize rates by investing largely in the securities of other railway systems with which his own lines indirectly connected or competed."

I quote further from Mr. Kennan:

> "Between June 30, 1906, and March 1, 1907, he invested for the Union Pacific more than $130,000,000 in the securities of nine different railway companies, whose lines covered almost the whole country from ocean to ocean and from the Great Lakes to the Gulf. The several amounts of stocks thus bought were as follows:

Atchison, Topeka & Santa Fe, preferred	$10,395,000
Baltimore & Ohio, preferred	6,665,920
Baltimore & Ohio, common	38,801,040
Chicago, Milwaukee & St. Paul	5,997,750
Chicago & North Western	5,303,673
Fresno City Railway	106,410
Illinois Central	41,442,028
New York Central	19,634,324
St. Joseph & Grand Island	2,022,540
	$130,368,685

> These amounts of stock were not sufficient, in any case to secure absolute majority control, but, as Professor Ripley has rightly said, "there can be no doubt that such substantial fractions could exercise a powerful influence upon the traffic policy of the properties concerned."

Writing in 1904, F. H. Spearman said:

> "It was the community of interest plan evolved by Mr. Cassett that did away with secret freight rates and rebates. To accomplish this, the Pennsylvania, acting, with other heavy owners in the railroad field, acquired large interests in the weaker roads, until, with co-operation, courage, and patience, the trunk lines, one and all, were brought into a phalanx against the common enemy."

I presume that Spearman meant by "common enemy" the great number of shippers of that day, who were constantly and everlastingly demanding concessions of some sort. He was, however, too hopeful, because while consolidations reduced the number of **possible victims,** it did not reduce the number of **applicants,** and the only thing that put the real fear of God into the heart of any "rebate-taker" was the Elkins Act, which was not clearly understood when Spearman prepared his copy for the printer.

While the Elkins law opened up a new vista to the large shipper and to the railroad which had tempted him or which, perhaps, had yielded to his blandishments, it also resulted in a radical reduction of the prevailing tariff rates.

As I have already said, immediately upon realizing that contract rates did not have any standing in the courts as against the tariff rates, the only alternative that appeared open at the time was the publication of the **contract** rates and a

general reduction on those commodities of the rates which had been **published in the tariff** and which had generally been paid by the small shippers. Therefore, one result of the prohibition of pooling and the sentiment against combinations, was to bring upon the carriers the burden of a scale of rates unduly low, because it was not designed for the general business of the country and, therefore, was not properly remunerative to the railroads as a whole.

In spite of the advances that have been made since that time, many of the carriers are now applying for an increase in the tariff rates.

The "rule of reason" was announced by the Supreme Court in 1911 and reaffirmed in 1912, and I think it is generally agreed that the year 1913 was the first year during which, for a long period, the railroad situation was peaceful throughout the country, while, at the same time, the public as a whole was prosperous.

However, while the decision of the Supreme Court permitted, so far as the National laws were concerned, orderly progress in the direction of further consolidation, the State charters and laws to which I have referred, were obstructive and irritating. The State of Mississippi was particularly active in this direction and caused both the Illinois Central and the Southern Railway to incur heavy expense in defending their respective policies in rounding out these two systems, and my recollection is that the cases were not finally dismissed until 1918, because in that year I left my office in the War Industries Board Building, in Washington, to appear as a witness in the suit against the Southern Railway.

By this time we were not only engaged in the war, but the railroads were in the hands of the Government and under the immediate control of the Director General of Railroads.

This control continued throughout the year 1919 and until March 1, 1920, and in the meantime the sentiment of the public with respect to consolidations had changed very materially, so that in 1919 Senator Cummins, Chairman of the Senate Committee on Interstate Commerce, felt justified in introducing a bill which authorized the railroads to combine voluntarily into groups and provided that at the end of seven years such combinations should be compulsory. This Bill was finally enacted into law as part of the Transportation Act of 1920 in the following terms:

"(4) **The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems.** In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable the existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties.

"(5) **When the Commission has agreed upon a tentative plan,** it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file

or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. **After the hearings are at an end. the Commission shall adopt a plan for such consolidation and publish the same**; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan.

"(6) It shall be lawful for two or more carriers by railroad, subject to this Act, to consolidate their properties or any part thereof, into one corporation for the ownership, management, and operation of the properties theretofore in separate ownership, management, and operation, under the following conditions:

"(a) The proposed consolidation must be in harmony with and in furtherance of the complete plan of consolidation mentioned in paragraph (5) and must be approved by the Commission."

This plan has not worked out to a satisfactory conclusion, because in the first place the Interstate Commerce Commission itself has not been able to devise a plan to which all its members will subscribe, and without such a pre-arranged plan, the consolidations cannot go forward to a finality.

In the second place, the prosperous roads, while in many cases willing to take over one or more of the weaker companies of their own selection, have been strenuously opposed to being saddled against their will with such weak lines or ones of similar characteristics.

I think it is clear that many of the tentative plans discussed by the Commission and some of those put forth by individuals, do not fulfill the spirit of the law, even as it now reads.

There have been several different kinds of consolidations since 1830:

(a) The consolidation of railroads naturally connecting and forming through consolidation a system more easily operated and one which can immediately furnish a better service to the public.

(b) A consolidation of subsidiary lines with the principal lines in the case where the subsidiary lines were originally created merely for the purpose of constructing a railroad with the avowed intention of disappearing by absorption into the larger or parent system when the work had been completed.

(c) The consolidation of railroads, which were really combinations of roads, for the purpose of suppressing competition.

Chairman Eastman, of the Interstate Commerce Commission, in his recent testimony before the Senate Committee, has very properly warned against haste in railroad consolidations, and had asserted it was entirely possible that a too rosy idea of the economies and benefits to be derived from consolidation is being painted. Nevertheless, in my opinion, further consolidations are inevitable. This country is more and more interested in a complete and comprehensive system of distribution, and this distribution depends upon transportation service.

It has been already demonstrated that with efficient service, it is no longer necessary to lay in large stocks of goods in anticipation of railroad congestions. The actual method of buying and selling goods is changing, and as Mr. Lons-

dale, President of the National Bank of Commerce in St. Louis, said recently, **"The quick turnover type of buying is replacing bulk shipments in many lines that heretofore claimed carload lot customers. * * * Thus the tendency of the Nation's distributional machinery is to meet the demand of business for turnover by shortening the deliveries, releasing the capital for other purposes."**

The necessity for quick delivery is also demonstrated by the changes in industrial centers. Factories illogically located are being moved to points more favorably situated for the quick assembling of raw materials and the effective deliveries of finished goods.

It is fair to say that prior to the decision of the Supreme Court, above referred to, it was clearly the honest belief of railroad officials and shippers that a manufacturing plant or a distributor might be legally guaranteed a contract rate or fixed relation to some other plant or distributor in the same business, regardless of any general scale or adjustment differing therefrom.

Even with the best intentions, it has not always been easy to interpret the law. (I have heard discussed whether paying for the lunch of a shipper could be called a concession!)

Business in this country is constantly changing and commodities of great traffic importance lose their relative standing as revenue producers as articles previously unknown rise into prominence.

I can give no better example than the substitute for silk, known as RAYON, which now equals in volume the imported silk.

Tanbark, once a heavy item of tonnage for the Cincinnati Southern, is a very small item to the Southern Railway, because it has been displaced by tannic acid, shipped in a different kind of car.

The long leaf pine of the South is struggling with Western fir in the common markets in this section of the country, and is being driven out.

It is evident that the carriers must be organized to meet these changing conditions.

In the meantime, the railroad mileage of the United States is decreasing. Year by year small railroads, subsidiaries to, or branch lines of, larger companies, having served out their period of usefulness have become serious financial liabilities.

As rapidly as the public authorities will permit, these lines are being abandoned.

Few small railroads can withstand the ups and downs of business. Heavy terminal expense and limited territory from which to draw traffic, combine to reduce profits to the disappearing point.

Small railroads cannot afford the kind of organization that is needed to insure local development and must always suffer from the competition of the advertising of the greater scope of the larger roads.

Railroading is not a philanthropic business, and each item of expense is expected to bring in a return to the railroad paying the bill.

When we consider the immense amount of money needed to provide such improvements as the great passenger terminals, the plans of reducing distance and cost of operation, such as the $9,000,000 Lucin Cut-off of the Union Pacific and the recently completed $25,000,000 Castleton Cut-Off of the New York Central, it is very clear that short railroads could not incur any substantial part of these expenses.

I believe that all railroad consolidations should be considered from the standpoint of the natural flow of traffic, because no one railroad, nor any single railroad system, at this time can subsist

solely on the traffic which both originates and ends on the rails of that system.

I have already pointed out that the large industrial area of the United States between the Mississippi and the Hudson and north of the Ohio River, comprises a population equal to, if it does not exceed, the total population of Great Britain. To distribute the products from Great Britain to any larger population, necessitates the use of water transportation and the seeking of markets in distant countries. To distribute the products beyond this industrial area of the United States requires merely a continuation of the movement by rail to the farthest limits of the United States, Canada and Mexico, while we have at the same time the same World Wide trade open to our merchants as is available to the merchants of England.

America is divided by natural conditions into three great territories—West of the Mississippi River, agriculture predominates; East of the Mississippi and North of the Ohio, industry is in the lead; while in the Southern States, comprising something like 20 per cent of our total population, there is a combination of agriculture and industrial production.

I conceive that the purpose of the Transportation Act of 1920 is to so combine the railroads of the country as not only to preserve competition, but to make each system so strong and self-reliant as to be able to withstand the vicissitudes resulting from local depressions in business, floods, labor troubles, etc., and this necessarily argues that by consolidating the railroads of the country into a few trans-continental systems operating east and west, and other systems operating north and south, the necessary independence will be secured, while the desirable competition will be fully maintained.

In my opinion, many of the plans for consolidation which have been proposed fail to diversify the traffic of the consolidated system any more than the traffic of the individually operated parent system was diversified and, therefore, these plans have failed to give sufficient elasticity with which to sustain the shock of local business disturbances.

A successful railroad system must combine the movement of farm products, of raw materials used in manufacturing; the products of manufacture of various descriptions, and a reasonable proportion of passenger traffic. This cannot be accomplished by dividing the United States into compact geographical zones and combining the railroads within those zones. It can only be accomplished by creating trans-continental systems, namely, between the Atlantic and the Pacific oceans, and between the Canadian border and the Gulf of Mexico and the Republic of Mexico.

In other parts of the business world we find economic consolidations going on, and in referring to the larger "public utilities," a recent writer in the Chicago Journal of Commerce, said:

> "The industry did more in 1925 than ever before to strengthen its position and to enhance its earning potentialities. Most significant of these accomplishments was the grouping of an unprecedented number of small companies into central station concerns. During the year 560 separate companies were involved in mergers; and the 407 companies that were acquired by larger units were capitalized at approximately $2,000,000,000, which is nearly 25 per cent of the total capitalization of the country."

I have formulated a definition of what I consider the proper way to regard the present and

future consolidation of railroads in the United States.

> "The modern theory of CONSOLIDATION is conceived in the interest of the public. It rests upon the thought that it is possible to assemble the railroads of the United States into a limited number of 'SYSTEMS,' so planned as to group under one management for each system, the roads which will give to each of such systems direct access to a great diversity of freight and passenger traffic, and thus to minimize the hazards which now result from labor troubles and from a violent or unexpected increase or reduction in the public's demand for goods; and also as a protection against abnormal fluctuations in the tonnage volume of the major crops of the farming areas.
>
> "It is also believed that the public will be directly and continuously benefited by the fact that this stability will insure a progressive, competent and competitive transportation service at rates which will produce the maximum NET return to the shipper and carrier; and the greatest expedition consistent with the comfort, convenience and safety to the traveler."

If consolidations proceed voluntarily on the part of the railroads, so as to carry out the principles which I have suggested, I am confident that the country will be substantially benefited.

1st. Because consolidation of railroads is not a new thing in this or any other country. Those which have been formed on logical lines have been almost uniformly successful. Those which have ignored traffic conditions and the development of diversified traffic, both local and through, have usually been successful.

2nd. This country, for a long time to come, will be divided up just about as it is now. That is, certain sections will be chiefly manufacturing and will, therefore, consume raw material and foodstuffs in excess of the local production; certain other sections will be chiefly concerned in producing food and these sections must find customers and consumers for every class of food or material for food which is produced in excess of the consuming capacity of the local population; other sections will produce both agricultural and manufactured products, but the climatic conditions are such that there will always be an excess of food or materials for food products in one locality and which must be shipped to another locality, while the manufacturers of completed articles for sale must necessarily find customers all over the United States. A consolidation of railroads, therefore, which will most readily distribute all these products, will be the most successful kind of consolidation.

3rd. Because the time value to the manufacturer, farmer and other producer and to the distributing merchant, will become more and more an essential feature of distribution and will be far more important than in the past. The very fact that labor is receiving such a largely increased return per hour, even now justifies close attention to the time value of transportation service. As a recent writer in an English paper said —**"Labor and rates have changed so enormously and the eight hour day has been of such far reaching effect, that even an hour or two saved from point to point in the transit of goods, counts very much more than it did in 1913."** Therefore, those con-

solidations which harmonize through traffic and transportation arrangements, will better conserve the item of time than those which merely group together into one system several railroads located in the same limited zone.

4th. Such consolidations will tend to produce economies because most of the traffic troubles today arise between connecting lines and not with the competing lines, especially since the passage of the Elkins Act. The consolidation of connecting lines from coast to coast and from the Candian border to the Gulf, will eliminate two-thirds of such disputes and substantially reduce the clerical work in traffic, operating and accounting departments.

Economies have not been found possible in England, because the English plan of "amalgamation" has been to localize each of the four great systems and upon the first attempt of any one of these systems to reduce expenses, there has been a public outcry alleging "monopoly." On the other hand, the possibility of trans-continental economies in the United States is shown by what has already occurred in Canada, in that the Presidents of the Canadian Pacific and Canadian National Railways have directed the traffic and operating officials of the two systems to meet as a joint standing committee, to discuss the best means of effecting immediate economies.

5th. Because with a properly consolidated railroad system reaching more than one section of the country, the farmer will be benefited in a way that is not possible under any other system of consolidation, as the longer through routes under one

control, will insure a better continuous service and will avoid the opportunity for disputes as to responsibility for delays. More than any one else, therefore, the farmer should encourage the proper consolidation of railroads, because only in this way can his markets be effectively broadened.

While this will not correct all the farmer's troubles, nor will it advance the prices on all of his products, it will give the farmer a better opportunity of reaching the markets of the United States at the time that those markets are best able to absorb his goods.

6th. Because consolidation would make simpler many problems of rail transportation and administration during any future wars, as in the nature of things there would be fewer organizations to be co-ordinated and, therefore, fewer to be disturbed.

T. C. POWELL.

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